

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ARCHITECTURAL CONCEPTS, LLC.

Plaintiff,

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V.

CIVIL ACTION NO. 1:19-cv-00600-RP

HUNT CONSTRUCTION GROUP, INC.

and MANCHESTER TEXAS

FINANCIAL GROUP, LLC

Defendants.

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MTFG'S RESPONSE HUNT'S MOTION TO COMPEL ARBITRATION

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant Hunt Construction Group Inc. (“Hunt”) does not address Plaintiff Architectural Concept LLC’s claims against co-Defendant Manchester Texas Financial Group LLC (“MTFG”) in Defendant Hunt Construction Group Inc.’s Motion to Compel Arbitration Pursuant to Rule 12(b)(1) and Alternatively, to Dismiss Pursuant to Rules 9(c) and 12(b)(6) (Dkt. 11) (“Hunt’s Motion to Compel Arbitration”).¹

MTFG files this Response to Hunt’s Motion to Compel Arbitration to reserve its rights to seek a stay of Plaintiff’s claims against MTFG should the claims against Hunt be submitted to arbitration. *See Waste Mgmt. v. Residuos Industriales Multiqum, S.A.*, 372 F.3d 339, 343 (5th Cir. 2004) (holding, pursuant to Section 3 of the Federal Arbitration Act,² non-signatory entitled to

¹ See Hunt’s Motion to Compel Arbitration p. 8 (“All of Plaintiff’s claims against Hunt therefore fall within the scope of the arbitration provision. . . . The Court should dismiss or stay all of the claims against Hunt pursuant to Rule 12(b)(1) and compel arbitration of this matter.”); p. 11 (“Plaintiff’s claims against Hunt should be dismissed and/or stayed pending arbitration.”).

² 9 U.S.C.S. § 3.

stay pending arbitration of claims between signatories when: “1) the arbitrated and litigated disputes . . . involve the same operative facts; 2) the claims asserted in the arbitration and litigation [are] ‘inherently inseparable’; and 3) the litigation [will] have a ‘critical impact’ on the arbitration”).

While thin on factual allegations, Plaintiff’s Original Petition (Dkt. 1-1) asserts the following causes of action: (A) Breach of Contract; (B) Quantum Meruit; (C) Prompt Pay Act; (D) Violations of the Texas Construction Trust Fund Act; and (E) Foreclosure of Lien. Pl.’s Orig. Pet. ¶¶ 11-25 (Dkt. 1-1). It appears that only Hunt is alleged to be liable for Breach of Contract and Quantum Meruit (causes (A) and (B)). *Id.* at ¶¶ 12-18. However, Plaintiff fails to specify an allegedly liable defendant for the later three causes of action, *i.e.* (C) Prompt Pay Act; (D) Violations of the Texas Construction Trust Fund Act; and (E) Foreclosure of Lien. *Id.* at ¶¶ 19-25.

Only four factual allegations support all of Plaintiff’s five claims: (1) that Hunt contracted with Plaintiff to perform work at the Fairmont Austin Hotel; (2) that Plaintiff provided services and furnished materials for Hunt; (3) that Plaintiff is owed \$657,452.19, and (4) that Hunt failed and refused to tender payment. *Id.* at ¶¶ 7-10.

Although one cannot discern which causes of action Plaintiff brings against MTFG, given the entirely duplicative alleged factual bases for the claims, it appears that if the claims against Hunt are compelled to arbitration, a stay of Plaintiff’s claims against MTFG would be appropriate. *See Waste Mgmt.*, 372 F.3d at 343. MTFG files this Response to reserve its rights.

CONCLUSION

Accordingly, MTFG notes its rights to seek a stay of Plaintiff’s claims against MTFG should the claims against Hunt be submitted to arbitration.

Date: July 22, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this the 22nd day of July, 2019, a copy of the foregoing document was served on the following as indicated:

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